

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER  
FERRON** (Mailed 11/4/2013)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Adopt New  
Safety and Reliability Regulations for Natural  
Gas Transmission and Distribution Pipelines  
and Related Ratemaking Mechanisms.

Rulemaking 11-02-019  
(Filed February 24, 2011)

**FINAL DECISION IMPOSING SANCTIONS FOR  
VIOLATION OF RULE 1.1 OF THE COMMISSION'S  
RULES OF PRACTICE AND PROCEDURE**

**1. Summary**

This decision finds that Pacific Gas and Electric Company (PG&E) violated Rule 1.1 of the Commission's Rules of Practice and Procedure by not correcting promptly a material misstatement of fact in a pleading filed with the Commission and by mischaracterizing the correction submitted for filing on July 3, 2013 as a routine and non-substantive correction. PG&E is fined \$14,350,000 for these violations.

**2. Background**

On July 3, 2013, Stephen L. Garber, Alejandro T. Vallejo, Jonathan D. Pendleton, and Joseph M. Malkin, representing Pacific Gas and Electric Company (PG&E), presented for filing with the Commission a document entitled "Errata to Pacific Gas and Electric Company's Supporting Documentation for Lifting Operating Pressure Restrictions on Line 101 and 147" (Errata).

That document stated that the supporting information PG&E filed with the Commission on October 31, 2011 and November 15, 2011, to justify its request to lift operating pressure restrictions on Lines 147 and 101 contained errors. Specifically, the 2011 pipeline features calculation for Line 147 relied on PG&E records showing the pipeline contained Double Submerged Arc Welds or was seamless, with a resulting joint efficiency factor of 1.0. In its July 2013 document, PG&E revealed it had subsequently discovered that the pipeline actually had Single Submerged Arc Welds, with a joint efficiency factor of 0.8. The lower joint efficiency factor reduced the pipeline's Maximum Allowable Operating Pressure (MAOP) from 365 pounds per square inch gauge (psig), as approved in Decision (D.) 11-12-048, to 330 psig.

The 2013 document also stated that the pipeline had been pressure tested to a minimum of 612 psig, and with a spike test of 669 psig, in 2011 and that PG&E was operating it at an MAOP of 330 psig.

The 2013 document stated that the Line 101 pipeline features list supporting an MAOP of 365 psig relied on a 1989 pressure test to 650 psig. PG&E explained that under a then-applicable but subsequently repealed section of federal regulations it should not have relied on the 1989 pressure test. Consequently, PG&E concluded that the correct pipeline feature MAOP was 330 psig, not the 365 psig approved by the Commission in D.11-12-048.

The Commission's Docket Office rejected the July 3, 2013, document for filing on August 2, 2013, as untimely to the extent that it sought to make a substantive change to issues in a previously filed document which the Commission had resolved by decision.

**3.      Order to Show Cause Ruling**

On August 19, 2013, the Chief Administrative Law Judge and the assigned Administrative Law Judge issued their Ruling Directing Pacific Gas and Electric Company to Show Cause Why It Should Not be Sanctioned for Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules).

In their ruling, the Judges stated that PG&E's July document raised procedural issues because parties are not allowed to file pleadings for the purpose of correcting minor typographical or computational errors in previously filed applications. The Judges observed that in the July filing PG&E appeared to be revealing that it had made a substantial error in its application, but that attempting to correct an application eighteen months after the Commission issued a decision and titling the document an "errata" appeared to be an unreasonable procedural choice.

The Judges explained that the record in this proceeding and others demonstrated that the accuracy of PG&E's natural gas transmission pipeline records has been and remained an extraordinarily controversial issue with intense public interest. The facts stated in PG&E's July filing appeared to directly implicate this issue, and submitting information of on-going record-keeping errors in a routine-appearing document could be seen as an attempt to mislead the Commission and the public on the significance of the new information.

The Judges ordered PG&E to appear at a hearing and show cause why it should not be sanctioned for violating Rule 1.1. Pursuant to Public Utilities (Pub. Util.) Code § 2107 the Commission may impose penalties for each offense, if found to be supported by evidence at hearing, of not less than \$500 nor more than \$50,000 for each offense.

Also on August 19, 2013, the assigned Commissioner and assigned Administrative Law Judge issued their ruling directing PG&E to Appear and

Show Cause Why All Commission Decisions Authorizing Increased Operating Pressure Should Not be Stayed Pending Demonstration that Records are Reliable. As required by that ruling, on August 30, 2013, PG&E filed and served the Verified Statement of its Vice President of Gas Transmission Maintenance and Construction setting forth the timeline of PG&E's discovery of the errors in its 2011 Supporting Information and its subsequent actions. The Verified Statement explained that after discovering and investigating the errors in late 2012, it reported the corrected pipe specifications to Commission Safety and Enforcement Division Staff on March 20, 2013.

#### **4.      Order to Show Cause Hearing on Rule 1.1 Violations**

On September 6, 2013, the Judges, along with assigned Commissioner Florio, and Commissioners Sandoval and Ferron, convened the hearing. PG&E presented its Lead Counsel who testified that he decided to title the document an errata after reviewing the Commission's Rules of Practice and Procedure, as well as the Ordering Paragraphs of D.11-12-048.<sup>1</sup> The Lead Counsel stated that PG&E had an "absolute obligation" to bring to the Commission's and the parties' attention that PG&E had found an error in its presentation to the Commission.<sup>2</sup> The Lead Counsel referenced the Verified Statement of PG&E's Gas Transmission Vice President admitting that PG&E was aware of the errors in the Line 147 application in October 2012.<sup>3</sup>

PG&E's Lead Counsel was subject to cross examination by the parties and PG&E ended its evidentiary presentation on Rule 1.1 violations at the conclusion

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<sup>1</sup> Transcript at 2347-52.

<sup>2</sup> Transcript at 2357.

<sup>3</sup> Transcript at 2352.

of the hearing. M. Kirk Johnson, Vice President, Gas Transmission Maintenance and Construction, and Sumeet Singh, Senior Director, Asset Knowledge Management, also testified on related issues and were subject to cross examination by parties on September 6, 2013.

Parties submitted recommendations for Commission action regarding Rule 1.1 violations on September 26, 2013, and replies on October 1, 2013. The Utility Reform Network (TURN) and the Office of Ratepayer Advocates (ORA) recommended a fine of \$12,700,000 calculated by using the statutory maximum of \$50,000 from Pub. Util. Code § 2107 multiplied by 253 days from the time PG&E discovered that its application to the Commission contained errors, plus \$50,000 for filing the document as an errata. Safety and Enforcement Division (SED) recommended a fine of \$75,000 but relied on § 2110.<sup>4</sup> The City of San Bruno supported all the fine recommendations and also sought to have PG&E's legal team separately fined and that PG&E be prohibited from reimbursing the law firm for the expenses. PG&E contended that no fine was warranted because it had acted in good faith and that specific intent to mislead the Commission was required to find a Rule 1.1 violation.

## **5. The Commission's Rules of Practice and Procedure**

Rule 1.1 states that any person who transacts business with the Commission agrees to "maintain the respect due to the Commission, members of the Commission, and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law."

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<sup>4</sup> As PG&E noted in its Reply Comments at 15, this section of the Public Utilities Code pertains to persons found guilty of a misdemeanor and is not the section the Commission is proceeding under at this time.

Rule 1.12(a) defines an amendment to a document as making “a substantive change to a previously filed document” and requires that all amendments be filed prior to issuance of the scoping memo. The time for other parties to file responsive documents to amendment runs from the date of filing the amendment as provided in Rule 1.12(b).

Rule 1.12(c) prohibits the filing of documents that correct minor typographical or wording corrections that do not alter the substance of the previously filed document.

Rule 16.4 sets forth the procedure for seeking to modify an issued Commission decision based on allegations of new or changed facts.

## **6. Discussion**

Pursuant to Pub. Util. Code § 451, each public utility in California must “furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, . . . as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.” Ensuring that the management of investor-owned gas utility systems fully performs its duty of safe operations is a core obligation of this Commission.

In this proceeding, the Commission and the parties have been reviewing and modifying regulatory obligations for recordkeeping for over two years:

This Commission is currently confronting the most deadly tragedy in California history from public utility operations. We are resolute in our commitment to improve the safety of natural gas transmission pipelines. In this context, it is absolutely essential that our regulated utilities display the highest level of candor and honesty. We understand that the issues at hand implicate substantial expenses and capital investments, and that the optimum means to address these safety issues may be subject to reasonable debate. To perform our Constitutional and statutory duties, we

must have forthright and timely explanations of the issues, as well as comprehensive analysis of the advantages and disadvantages of potential actions. Attempts at legal exculpation have no place in our proceedings to address these urgent issues.

PG&E needs to rebuild the Commission's and the public's trust in the safety of its operations. The directives in today's decision are necessary steps to ensure safe operations and to restore public trust.

As the detailed history set out above shows, this project to validate MAOP was set in motion by the NTSB's justifiable alarm at PG&E's records being inconsistent with the actual pipeline found in the ground in Line 132. The pipeline features data for Line 132 were not missing; the recorded data were factually inaccurate. Records containing inaccurate pipeline features are fundamentally different from simply missing records. Curing PG&E's unreliable natural gas pipeline records was the obvious goal of the NTSB's recommendation to obtain "traceable, verifiable, and complete" records and, with reliably accurate data, calculate a dependable MAOP.<sup>5</sup>

The essential facts are not disputed. On October 31, 2011, and November 15, 2011, PG&E supplied its supporting information to increase its MAOP on Lines 101, 132A, and 147 to 365 psig. This information included a "pipeline features list showing each component and its characteristics."<sup>6</sup> Beginning on October 18, 2012, PG&E discovered that several components of the pipeline features list were wrong, resulting in a lower MAOP of 330 psig for

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<sup>5</sup> D.11-06-017 at 16 – 17.

<sup>6</sup> D.11-12-048 at 4.

Line 147.<sup>7</sup> Among the errors discovered was that Line 147 segments 103, 103.1 and 103.6 were not seamless pipeline but rather Single Submerged Arc Welded, as was Line 147 segment 109 which had been incorrectly recorded as Double Submerged Arc Weld.<sup>8</sup>

On March 20, 2013, PG&E informed Commission staff that it had corrected pipeline specifications for Line 147.

PG&E informed parties to this proceeding, and attempted to inform the Commission, of these errors and the new maximum value on July 3, 2013, when it circulated a document titled "Errata" to the parties and presented it for filing with the Commission. The Commission rejected the document for filing on August 2, 2013.

At the Order to Show Cause hearing PG&E admitted that it had an "absolute obligation" to bring the errors it had discovered to the attention of the Commission and the parties to this proceeding.<sup>9</sup> PG&E presented information regarding the errors to staff on March 20, 2013 but the information was not fully and correctly disclosed to the Commission, the parties in this proceeding, and the public until August 30, 2013, when PG&E filed and served the Verified Statement of its Vice President of Gas Transmission Maintenance and Construction setting forth the timeline of PG&E's discovery of the errors in its 2011 Supporting Information and its subsequent actions.

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<sup>7</sup> The July 3, 2013 Errata (Exhibit OSC-1) described the weld type documentation errors, but did not disclose when PG&E discovered the discrepancies; that information was not provided to the Commission until the August 30, 2013 Verified Statement.

<sup>8</sup> The pipeline segment involved in the San Bruno rupture and explosion was similarly incorrectly recorded as seamless, when in fact it was not.

<sup>9</sup> Transcript at 2357.



## **6.1. Rule 1.1 – Delay in Correcting Record**

### **6.1.1. PG&E Became Aware of the Records Discrepancies Beginning in October 2012**

PG&E submitted a pipeline features list that contained inaccurate pipeline features in October of 2011, and upon which the Commission relied in issuing D.11-12-048 and setting the MAOP at 365 psig.<sup>10</sup> Beginning on October 18, 2012, PG&E discovered several errors and corrected the MAOP to 330 psig for its actual pipeline operations, but did not inform the Commission or the parties, or attempt to correct the record until July 3, 2013. Further, as discussed in more detail in Section 6.2 below, the “Errata” submitted for filing on that date was not forthright and did not disclose, for example, when or how PG&E became aware of the errors.

Only in the Verified Statement filed on August 30, 2013 did PG&E disclose that a “routine”<sup>11</sup> gas leak survey had led to the discovery of a gas leak on Line 147, which in turn led, on October 18, 2012, to the first discovery that the transmission line differed from its documented specifications. Over the next

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<sup>10</sup> Not all gas transmission pipelines have an MAOP established by Commission decision. PG&E voluntarily reduced pressure on Line 147 after an emergency Executive Director’s Order directed PG&E to reduce operating pressures on certain Peninsula lines by 20% on September 13, 2010. PG&E filed a Motion to Lift Operating Pressures on Lines 101, 132A and 147 on October 10, 2011; D.11-12-048 responded to this motion and authorized pressure adjustments based on the supporting information filed by PG&E.

<sup>11</sup> PG&E explained subsequently that the leak survey was scheduled because a PG&E employee on standby during a water utility main repair observed a leak on the nearby Line 147 (Transcript at 2637–39).

several weeks, PG&E found additional errors in the documented specifications of Line 147.<sup>12</sup>

PG&E management is fully responsible for any pipeline integrity problems in its current system. These matters must have the full and undivided attention of every member of the senior management team of PG&E. In this circumstance, the only acceptable response is one which is rapid, complete and in good faith.

The new senior management team, many of whom were brought into PG&E partially in response to the San Bruno disaster, must monitor closely every discovery in the field in relation to pipeline integrity. The discovery of the first records discrepancy on Line 147 demonstrated that, even after the MAOP validation effort had been completed for this pipeline, PG&E had still miscalculated the proper MAOP for a segment of high consequence pipeline. Regardless of whether the pipeline was operating at a safe pressure after the records discrepancies were found, their discovery indicated that there was a specific problem with Line 147 and that, more generally, there were problems with the process for validating pipeline records.

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<sup>12</sup> PG&E's Lead Counsel testified, with reference to the Verified Statement, that PG&E had a conference call with a member of Safety and Enforcement Division staff on March 20, 2013 (Transcript at 2356). During that call, application of a one-class-out analysis to Lines 147 and 101, and corrected pipe specifications for Line 147 were discussed, among other topics. However, perusal of the two-page handout for that call (attached to the Verified Statement) contains only one cryptic phrase that might refer to record discrepancies for Line 147: "2 sections of newly discovered pipe specifications less than expected." Thus, based on the evidence, it appears that on the March 20, 2013 conference call PG&E did not provide adequate notice to the staff or to the Commission regarding the errors in Line 147 specifications and the need to modify D.11-12-048. In any event, as explained elsewhere, informing staff about erroneous data upon which a Commission decision is based is not the proper way to inform the Commission of erroneous information on the record in a proceeding. We emphasize that Rule 1.1 does not treat the Commission and its staff as synonymous.

In fact, PG&E's Vice President of Gas Transmission Maintenance and Construction acknowledged in his testimony on September 6, 2013 that he became aware of the first records discrepancy in late October or early November, shortly after it was discovered by engineers in the field on October 18, 2012.<sup>13</sup> His Verified Statement indicates that a pipeline engineer sent an e-mail notification of the discrepancy on November 14, 2012 to various PG&E departments, including MAOP Validation, Integrity Management, Operations, Pipeline Safety Enhancement Plan, Hydrotest and Gas Planning, and that, based on the discrepancy, PG&E decided to lower the pressure to 330 psig and to re-review the entire MAOP documentation for Line 147.<sup>14</sup> He further admitted that because of the highly unusual nature of this discrepancy and the circumstances of its discovery, it was "highly likely" that he would have discussed this finding with his superiors at one of their regular monthly Pipeline Safety Enhancement Plan executive meetings, if not more immediately.<sup>15</sup>

The Lead Counsel claimed attorney-client privilege when questioned about when senior managers were first told about the Line 147 record discrepancies.<sup>16</sup> However, the admissions by PG&E's Vice President, coupled with the serious nature of the discrepancies, the widespread knowledge throughout the gas division of this discovery, and the additional steps taken to address this problem, lead us to conclude that senior management either knew or should have known

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<sup>13</sup> Transcript at 2474.

<sup>14</sup> Verified Statement at 8, ¶ 33.

<sup>15</sup> Transcript at 2480 - 2481.

<sup>16</sup> Transcript at, e.g., 2362 - 2364, 2382 - 2383, and 2396.

about the serious records discrepancies and pipeline flaws shortly after they were discovered and that this was a significant safety matter in the public's interest.

The date when PG&E's top management became aware of the true nature of the pipeline is not determinative of whether PG&E should be accountable for its failure to inform the Commission promptly of the erroneous information underlying D.11-12-048. Given the importance of ensuring the integrity and safety of the transmission system, PG&E should have had internal procedures in place to ensure that incidents such as the discovery of record discrepancies for Line 147 would be relayed promptly to top management and reported to the Commission.

**6.1.2. PG&E Did Not Timely Inform the Commission  
of the Erroneous Information Underlying D.11-12-048**

As set forth above, the errors discovered included pipeline incorrectly recorded as seamless, a fact pattern distressingly similar to San Bruno. It is not credible that PG&E's engineers and executives did not recognize the provocative nature of these facts in light of the intense public interest in natural gas pipeline safety. This is particularly true where, as here, Line 147 had been the subject of a pressure increase proceeding at the Commission the previous year. While the errors were swiftly investigated and reported to management by engineers in the field, PG&E did not, in turn, expeditiously disclose this information to the regulator or to local safety authorities.

When the Commission has issued a decision in a formal proceeding where a key Ordering Paragraph sets a safety standard that relies on material information later found to be erroneous, the proper method for a party to bring this to the Commission's attention would be through a prompt filing in the proceeding, which could be a motion to reopen the record or a petition for modification of the decision, depending on the circumstances. Since PG&E

became aware of record discrepancies beginning on October 18, 2012, we find that PG&E should have prepared and submitted a filing to inform the Commission of this significant and material discovery no later than November 16, 2012.

The Lead Counsel explained that, at his recommendation, the Errata was not submitted for filing before July 3<sup>rd</sup> because PG&E's gas division only completed a review of its "one class out policy" on July 2, 2012.<sup>17</sup> He recognized that in Ordering Paragraph 1 of D.11-12-048, the Commission authorized PG&E to operate natural gas transmission Lines 101, 132A, and 147 up to a maximum operating pressure of 365 psig, and in Ordering Paragraph 2 also directed PG&E to operate the lines "in accord with applicable state and federal law and regulations." The Lead Counsel reported that, with reference to the Verified Statement, a change in PG&E's one class out policy might modify the MAOP permissible to comply with the federal code and Ordering Paragraph 2, and that the gas organization resolved that issue on July 2, 2012. He concluded that, "We then went ahead and filed as quickly as we could, frankly, without any thought on my part that this was going to be July 3<sup>rd</sup> before the July 4<sup>th</sup> holiday..."<sup>18</sup>

This explanation does not justify the delay in notifying the Commission. Once PG&E had knowledge of material errors in its filed Supporting Information that the Commission relied upon to set a safety standard in D.11-12-048, PG&E

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<sup>17</sup> The Verified Statement (page 15) describes that federal regulations require a greater margin of safety for pipelines operating in more heavily populated areas, using four categories of classes with, e.g., the highest Class 4 representing heavily populated areas. The federal regulations allow pipelines to operate at the higher pressures applicable to one class lower ("one class out") under certain conditions.

<sup>18</sup> Transcript at 2348-52.

should have brought the record discrepancies to the Commission's attention through an appropriate filing while it investigated the application of its one-class-out policy. By omission, PG&E's failure to promptly make such a filing misled the Commission by allowing a "false statement of fact," within the meaning of Rule 1.1, to remain uncorrected after PG&E had the knowledge to correct it.

**6.1.3. PG&E's Delay in Reporting the Records Discrepancies Misled the Commission and Violated Rule 1.1**

Instead of informing the Commission promptly, PG&E waited over seven months to correct information that it knew to be incorrect and that it knew the Commission had relied upon in issuing D.11-12-048. PG&E did not attempt to correct the record in this proceeding or inform the parties until July 3, 2013, when it submitted the Errata document for filing and served the parties.

As discussed above, to perform our Constitutional and statutory duties, we must have forthright and timely factual information. We find that PG&E's failure to correct a known error in a significant and material factual representation to the Commission, in the circumstances here, misled the Commission by allowing a "false statement of fact," within the meaning of Rule 1.1, to remain uncorrected after PG&E had the knowledge to correct it; the "false statement" continued for each day that PG&E allowed the erroneous information to persist. Therefore, we conclude that, under the circumstances presented here, PG&E has violated Rule 1.1 by allowing known errors to persist without correction in its Supporting Information for Line 147 on file with the Commission.

To summarize, we find that PG&E's obligation to inform the Commission of the errors in its 2011 Supporting Information that was relied on in Ordering Paragraph 1 setting a safety standard in D.11-12-048 began no later than

November 16, 2012. PG&E did not attempt to inform the Commission of the errors until July 3, 2013, a delay of 229 days. This unreasonable delay misled the Commission by allowing a key “false statement of fact” to persist uncorrected and was a violation of Rule 1.1. We find that this constitutes a continuing violation within § 2108. Thus, we conclude that this Rule 1.1 violation persisted for 229 days.

### **6.2. Rule 1.1 – Title, Content, and Submission Date of the “Errata” Document**

We begin by noting that the Commission’s Rules of Practice and Procedure do not provide for a filing called an “errata” and that Rule 1.12(c) prohibits the filing of documents that correct minor typographical or wording corrections that do not alter the substance of the previously filed document, a purpose for which a document entitled errata has been historically used in practice.

The record on Line 147 had been closed and the Commission decision issued. At a minimum, in light of the circumstances here, the record needed to be re-opened and corrected, and for a more complete resolution, D.11-12-048 should have been modified to reflect the correct maximum allowable operating pressure.

PG&E’s Lead Counsel testified that there was “no question” that PG&E had to bring the errors “to the attention of the Commission and the parties.”<sup>19</sup> But he rejected using an Amendment to the original filing “because the proceeding was closed.”<sup>20</sup> The Lead Counsel said that he instead chose errata as he had “seen it used in rate cases to change numbers [and] in rate cases there is

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<sup>19</sup> Transcript at 2348.

<sup>20</sup> *Id.*

hardly anything that is more substantive than a number.”<sup>21</sup> The Lead Counsel concluded that errata is “literally a list of errors and corrections, and that is exactly what we submitted.”<sup>22</sup>

This testimony is not credible because it is not logical. The Lead Counsel, with decades of experience, admits that notice of the corrections was “absolutely required.” Then, he dismissed use of an amendment, because the record was closed; but the record was equally closed for the errata. No explanation was offered for this flawed logic.

The obvious solution to a closed record is a motion to reopen the record, which apparently was not considered, notwithstanding the admitted need to give notice. Similarly, the other alternative for post-decision relief, a petition for modification, was rejected with a complicated analysis suggesting that the Ordering Paragraphs, when read together, did not require modification due to the effect of PG&E’s reassessment of its one class out policies on the MAOP allowed under federal code and Ordering Paragraph 2.<sup>23</sup>

In sum, the Lead Counsel chose to submit for filing a document which, while not provided for in the Rules of Practice and Procedure, is typically used to inform parties of minor changes and corrections in documents, most commonly prior to the original document being offered for the record, but in any event before the Commission issues its decision. This submission had the effect of concealing from the Commission and the parties the actual nature of the

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<sup>21</sup> Transcript at 2350.

<sup>22</sup> Transcript at 2351.

<sup>23</sup> Transcript at 2348 – 50.



document.<sup>24</sup> The ensuing level of controversy caused by the issues revealed in the July 3, 2013 document stands in stark contrast to the routine-sounding title chosen by the Lead Counsel. The explanation offered by the Lead Counsel for his selection of the title is not persuasive because it is logically flawed.

Further, the “Errata” submitted for filing is a short document with only one page devoted to a brief description of the errors in the MAOP validation records submitted previously for Line 147 and the resulting need to reduce the MAOP from the 365 psig authorized by D.11-12-048 to 330 psig. The “Errata” did not disclose, for example, when or how PG&E became aware of the errors, the reasons for the errors, or corrective actions that were being taken following discovery of the errors.

As set forth in D.11-06-017 (quoted above), PG&E has been on notice since June of 2011 that its presentations to this Commission and the public on natural gas transmission system safety must be both forthright and timely. In addition to not being timely, as described in Section 6.1, we find that PG&E’s attempted July 3 filing of the “Errata” was not forthright, both because of the title and the incomplete content.

Because the document presented by PG&E for filing with the Commission on July 3, 2013, did not clearly convey the nature or significance of the facts set forth within, we find that it was an artifice, as that term is used in Rule 1.1, and misled the Commission. The misleading nature was exacerbated by the submission date of July 3, before a holiday weekend.

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<sup>24</sup> Additionally, unlike a motion to reopen or a petition for modification, the Errata document, if it had been accepted for filing, would not have created an opportunity for parties to file responses.

We conclude that PG&E's submission of the "Errata" document was a separate violation of Rule 1.1.<sup>25</sup> This shortcoming remained uncorrected until PG&E filed and served the Verified Statement of its Vice President of Gas Transmission Maintenance and Construction on August 30, 2013. We find that this constitutes a continuing violation within § 2108. Thus, we conclude that this Rule 1.1 violation persisted for 58 days.

### **6.3. Calculation of Fine**

Pursuant to § 2109<sup>26</sup> all acts or omissions of an officer or employee acting within the scope of employment are the acts of the public utility. Each day's continuance of a continuing violation is a separate and distinct offense as provided in § 2108. The Commission may impose a fine of up to \$50,000 for each offense, § 2107.

As stated in D.98-12-075, the Commission considers two general factors in determining a fine: (1) the severity of the offense; and (2) the conduct of the utility. In addition, the Commission considers the financial resources of the

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<sup>25</sup> In its brief, PG&E argues that we must find specific intent to violate Rule 1.1. The Commission addressed that issue in D.01-08-019 and found that intent should be considered as an aggravating factor in determining the range of the fine. However, the unique factual history of this matter – the worst tragedy in Commission history, a specific directive for forthright and timely information, and an admitted need for notice – leads us to put the fine at the highest levels. Thus, while the Lead Counsel has admitted that the choice of title was intentional, that is, he intended to and did title the document errata, we need not and do not consider whether specific intent was an aggravating factor in this instance.

<sup>26</sup> All citations are to the Public Utilities Code unless otherwise indicated.

utility, the totality of the circumstances in furtherance of the public interest, and the role of precedent.<sup>27</sup>

Here, the facts of this proceeding require that we impose the maximum fine. Natural gas transmission system safety by this operator has been one of the Commission's highest priorities for three years. The management and legal decision-making regarding the treatment of the discovery of errors in the Line 147 Supporting Information, as reflected in this record, is profoundly disheartening in that it reflects a lack of candor and appreciation of the public interest and the regulatory process.

Therefore we calculate the fine as follows. For delay in submitting a filing to disclose information regarding errors in pipeline specifications for Line 147, we impose the maximum amount of \$50,000 per day as a continuing violation aggravated by the severity of this safety-related offense and the conduct of the utility. We begin the calculation on November 16, 2012, the date by which we find that PG&E should have prepared and submitted a filing to inform the Commission of the significant and material discovery of the records discrepancy and end the calculation on the date that PG&E submitted its Errata document for filing, July 3, 2013, a delay of 229 days. We assess the maximum statutory value of \$50,000 per day for this continuing violation based on the history of this proceeding as set forth above. The resulting fine is \$11,450,000.

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<sup>27</sup> In deciding the amount of a penalty, the Commission also considers the sophistication, experience and size of the utility; the number of victims and economic benefit received from the unlawful acts; and the continuing nature of the offense. (See D.98-12-076, mimeo. at 20-21.)

For submitting a misleadingly titled and factually incomplete document on July 3, 2013, \$50,000 per day for the 58 days while this shortcoming remained uncorrected = \$2,900,000. Total fine = \$14,350,000.

## **7.      Comments on Alternate Proposed Decision**

The alternate proposed decision of Commissioner Mark J. Ferron in this matter was mailed to the parties in accordance with § 311 of the Pub. Util. Code and comments were allowed under Rule 14.3. Comments were filed on November 25, 2013 and reply comments were filed on December 2, 2013 by PG&E, ORA, SED, TURN, the City of San Bruno, and the City and County of San Francisco.

In addition, Oral Argument was requested by PG&E and held in the Commission's San Francisco offices on December 2, 2013. PG&E, ORA, SED, TURN, the City of San Bruno, and the City and County of San Francisco participated.

We address PG&E's main objections to the alternate proposed decision. PG&E argues that the scope of the Order to Show Cause ruling was narrowly defined, and limited only to the misuse of the word "errata" in the title of the document, and the circumstances of filing the document on July 3, 2013, the day before the fourth of July holiday weekend. We do not agree that the scope of the ruling should be read in such a limited manner. The Order to Show Cause ruling put PG&E on notice that the full circumstances of its failure to inform the Commission in a forthright and timely manner would be considered; the dubious title of the document and the circumstances of the filing date were not all that

was alleged.<sup>28</sup> Further, PG&E, by the facts first revealed in its Verified Statement regarding the timing of discovery of the record errors, raised the issue of its delay in making a filing. Moreover, the issues of the delay and the reasons for the delay were litigated at the hearing on the Rule 1.1 Order to Show Cause, and PG&E presented evidence on those issues.

PG&E argues that the alternate proposed decision relies on evidence outside the record of the Order to Show Cause on Rule 1.1 evidentiary hearings. We disagree. The alternate proposed decision relies on the testimony of the Lead Counsel at the September 6, 2013 evidentiary hearing, as well as the Verified Statement and testimony of the Vice President of Gas Transmission Maintenance and Construction. The Verified Statement was relevant to both the morning (Rule 1.1) and afternoon (whether to revise MAOP levels) evidentiary hearings, and testimony during either hearing is deemed to be part of the record for both hearings.

PG&E further argues that the Commission must show that PG&E intentionally misled the Commission. However, there is no “intent” element to a Rule 1.1 violation, either implicitly or explicitly. We have previously held that Rule 1.1 violations have occurred where there has been a lack of candor, withholding of information, or failure to correct information or respond fully to data requests.<sup>29</sup>

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<sup>28</sup> The Order to Show Cause (OSC) ruling specifically states that, “[a]ttempting to correct an application 18 months after the Commission issued a decision appears to be an unreasonable procedural choice” (OSC ruling at 4), and thus expressly raises the issue of PG&E’s delay in filing.

<sup>29</sup> See D.93-05-020, D.92-07-084, D.92-07-078, and D.01-08-019.

PG&E additionally asserts that the alternate proposed decision relies on speculation, and improperly shifts the burden to disprove the Rule 1.1 allegations onto PG&E. In response to these comments, we have made changes to the alternate proposed decision.

Comments of the other parties generally support the alternate proposed decision. We have made revisions where appropriate as suggested by the comments.

The alternate proposed decision also has been revised to reflect that the Errata document submitted on July 3, 2013 did attempt to inform the Commission of the errors in the Supporting Information, although the Errata document was itself misleading. The calculation of the fine has been adjusted accordingly.

## **8. Assignment of Proceeding**

Michel Peter Florio is the assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. On October 31, 2011 and November 15, 2011, PG&E filed Supporting Information to justify its request to lift operating pressure restrictions on Lines 147 and 101.
2. Ordering Paragraph 1 of D.11-12-048 relied on PG&E's supporting information in approving an increase in MAOP to 365 psig.
3. PG&E became aware of record discrepancies for Line 147 beginning on October 18, 2012.
4. On July 3, 2013, PG&E submitted for filing an "Errata" document stating that the October 31, 2011 and November 15, 2011 Supporting Information contained errors and that, as a result, PG&E had reduced the MAOP to 330 psig.

5. On August 19, 2013, the Chief Administrative Law Judge and the assigned Administrative Law Judge issued their Ruling Directing PG&E to Show Cause Why It Should Not Be Sanctioned by the Commission for Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure.

6. On August 30, 2013, PG&E filed the Verified Statement of its Vice President of Gas Transmission Maintenance and Construction setting forth the timeline of PG&E's discovery of the errors in its 2011 Supporting Information, the reasons for the errors, and its subsequent actions.

7. On September 6, 2013, the Commission convened a hearing and PG&E presented its Lead Counsel as a witness.

8. PG&E's Vice President of Gas Transmission Maintenance and Construction became aware of the first records discrepancy found for Line 147 in late October or early November, and testified that it was "highly likely" that he would have discussed this finding shortly thereafter with his superiors.

9. The Lead Counsel testified that he selected the title and was responsible for the timing of filing and the content of the Errata document presented to the Commission on July 3, 2013.

10. PG&E's March 20, 2013 conference call with staff did not provide adequate notice to the Commission regarding the errors in Line 147 pipeline specifications or the need to modify D.11-12-048 to base the MAOP on corrected information regarding Line 147.

11. Lead Counsel's explanation that the soonest the errata could be filed was July 3, 2013 is not credible because there is no reason why PG&E could not have brought the records discrepancy to the Commission's attention while it investigated the application of its "one class out" policy.

12. PG&E's Errata document attempted to inform the Commission, albeit incompletely, of the errors in its Supporting Information. PG&E waited over seven months to make this submission to correct information that it knew to be incorrect and that it knew the Commission had relied upon in issuing D.11-12-048.

13. PG&E's failure to correct a known error in a significant and material factual representation to the Commission that the Commission relied upon in setting a safety standard in Ordering Paragraph 1 in D.11-12-048 misled the Commission by allowing a key "false statement of fact," within the meaning of Rule 1.1, to remain uncorrected after PG&E had the knowledge to correct it, for each day that PG&E allowed the erroneous information to persist.

14. The Commission's Rules of Practice and Procedure do not provide for a document titled Errata.

15. The record for the pressure increase on Line 147 was closed prior to the Commission issuing D.11-12-048 on December 19, 2011.

16. After a record is closed, the only filings permitted pursuant to the Commission's Rules of Practice and Procedure are a Petition for Modification or a Motion to Reopen the Record.

17. The explanation by Lead Counsel that he chose an errata after rejecting an amendment to the Supporting Information filing is logically flawed because neither document can be filed after a record is closed.

18. The "Errata" submitted for filing on July 3, 2013 had only one page devoted to a brief description of the errors in the records for Line 147, and did not disclose when or how PG&E became aware of the errors, the reasons for the errors, or corrective actions that were taken following discovery of the errors.



19. The Lead Counsel's decision to submit for filing the document titled "Errata" had the effect of concealing from the Commission and the parties the actual nature of the document.

20. With D.11-06-017, PG&E has been on notice since June of 2011 that its presentations to this Commission and the public on natural gas transmission system safety must be both forthright and timely.

21. PG&E's July 3, 2013, filing was neither forthright nor timely.

22. PG&E did not fully and correctly disclose information regarding errors in pipeline specifications for Line 147 until August 30, 2013 when the Verified Statement was filed.

23. The natural gas transmission system safety procedures of PG&E have been one of the Commission's highest priorities for three years.

24. The management and legal decision-making regarding the treatment of the discovery of errors in the Line 147 Supporting Information reflects a lack of candor and appreciation of the public interest and the regulatory process.

### **Conclusions of Law**

1. PG&E's senior management either knew or should have known about the serious records discrepancies and pipeline flaws shortly after they were discovered, and that this was a significant safety matter of great interest to the Commission, the parties, and the public.

2. Given the importance of ensuring the integrity and safety of the transmission system, PG&E should have had internal procedures in place to ensure that incidents such as the discovery of record discrepancies for Line 147 would be relayed promptly to top management and reported to the Commission.

3. Pursuant to Public Utilities Code § 2109, all acts or omissions of an officer or employee acting within the scope of employment are the acts of the public utility.

4. The date when PG&E's top management became aware of the true nature of the pipeline is not determinative of whether PG&E should be accountable for its failure to inform the Commission promptly of the erroneous information underlying D.11-12-048.

5. The Lead Counsel's attempt to explain the delay by referring to the need for PG&E to review its one-class-out policy is not credible.

6. PG&E could have, and should have, brought the record discrepancy to the Commission's attention while it investigated the application of its one-class-out policy.

7. By omission, PG&E's failure to promptly make a filing notifying the Commission of the material errors in its Supporting Information underlying a safety standard set in D.11-12-048 misled the Commission by allowing a key "false statement of fact," within the meaning of Rule 1.1, to remain uncorrected after PG&E had the knowledge to correct it. This omission violated Rule 1.1.

8. PG&E's obligation to inform the Commission of the errors in its 2011 Supporting Information that was relied on in Ordering Paragraph 1 setting a safety standard in D.11-12-048 began no later than November 16, 2012. PG&E did not meet that obligation until July 3, 2013 when PG&E submitted its Errata document for filing, a delay of 229 days.

9. Each day that the "false statement of fact" was allowed to persist constitutes a continuing Rule 1.1 violation within § 2108. Thus, this Rule 1.1 violation persisted for 229 days.

10. The Lead Counsel's explanation as to his rationale for deciding to title the document errata was not credible.

11. Because the title and content of the "Errata" document presented by PG&E for filing with the Commission on July 3, 2013, did not clearly convey the nature or significance of the facts set forth within, it was an artifice, as that term is used in Rule 1.1, and misled the Commission. The misleading nature of the document was exacerbated by its submission date of July 3, 2013, before a holiday weekend.

12. Because it misled the Commission, PG&E's submission of the July 3, 2013 "Errata" document violated Rule 1.1. This shortcoming remained uncorrected until PG&E filed and served the Verified Statement of its Vice President of Gas Transmission Maintenance and Construction on August 30, 2013.

13. Each day the shortcomings of the "Errata" remained uncorrected constitutes a continuing violation of Rule 1.1 within § 2108. Thus, the Rule 1.1 violation for the submission of the "Errata" persisted for 58 days.

14. The Commission should impose the maximum fine on PG&E for its actions with regard to the treatment of the discovery of errors in the Line 147 Supporting Information.

15. PG&E should be fined as follows: For delay in submitting a filing to disclose information regarding errors in pipeline specifications for Line 147, \$50,000 per day for 229 days = \$11,450,000. For submitting a misleadingly titled and factually incomplete document on July 3, 2013, \$50,000 per day for the 58 days these shortcomings remained uncorrected = \$2,900,000. Total fine = \$14,350,000.

16. PG&E should be ordered to pay a fine of \$14,350,000.

**O R D E R**

Therefore, **IT IS ORDERED** that:

1. Pacific Gas and Electric Company must pay a fine of \$14,350,000 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 40 days of the effective date of this order. Pacific Gas and Electric Company shall write on the face of the check or money order "For deposit to the General Fund per Decision \_\_\_\_."
2. All money received by the Commission's Fiscal Office pursuant to the preceding Ordering Paragraph shall be deposited or transferred to the State of California General Fund as soon as practical.
3. The Order to Show Cause on Rule 1.1 violations portion of this proceeding is closed.
4. The Order to Show Cause regarding increased operating pressures and the Rulemaking portions of this proceeding shall remain open.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.